

The Honorable Kymberly K. Evanson

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

JAMON RIVIERA; CURTIS BANTA;  
YONKMAN CONSTRUCTION, INC.; PARAS  
HOMES, LLC; CONDRON HOMES, LLC;  
GARCO CONSTRUCTION, INC.;  
ARLINGTON 360, LLC; HUSEBY HOMES,  
LLC; SPOKANE HOME BUILDERS  
ASSOCIATION; WASHINGTON STATE  
ASSOCIATION OF UA PLUMBERS,  
PIPEFITTERS AND HVAC/R SERVICE  
TECHNICIANS; WASHINGTON AND  
NORTHERN IDAHO DISTRICT COUNCIL  
OF LABORERS; CITIZEN ACTION  
DEFENSE FUND; NATIONAL PROPANE  
GAS ASSOCIATION; AVISTA  
CORPORATION; CASCADE NATURAL  
GAS CORPORATION; and NORTHWEST  
NATURAL GAS COMPANY,

Plaintiffs,

v.

KJELL ANDERSON, JAY ARNOLD, TODD  
BEYREUTHER, JUSTIN BOURGAULT,  
DAIMON DOYLE, TOM HANDY, ANGELA  
HAUPT, ROGER HEERINGA, MATTHEW  
HEPNER, CRAIG HOLT, TYE MENSER,  
BENJAMIN OMURA, PETER RIEKE, KATY  
SHEEHAN, in their official capacities as  
Washington State Building Code Council

Case No. 2:24-cv-00677-KKE

INTERVENORS' ANSWER IN  
INTERVENTION

Members; and BOB FERGUSON, in his official capacity as Attorney General of Washington,

Defendants.

Proposed Defendant-Intervenors Climate Solutions, The Lands Council, Sierra Club, and Washington Physicians for Social Responsibility hereby respectfully submit this Answer to the Complaint in this case filed May 15, 2024. The numbered paragraphs below correspond to the numbered paragraphs in the complaint. Intervenors deny each and every allegation in the Complaint, including allegations contained in headings and subheadings, that is not specifically admitted in this answer.

#### INTRODUCTION

1. This paragraph characterizes the relief Plaintiffs seek, to which no response is required. To the extent a response is required, Intervenors deny that Plaintiffs are entitled to any relief at all.

2. The allegations in this paragraph are legal arguments that require no response.

3. Denied.

4. Denied.

#### JURISDICTION

5. The allegations in this paragraph are legal arguments that require no response.

6. The allegations in this paragraph are legal arguments that require no response.

7. As to the assertion of jurisdiction in this paragraph, that allegation is a legal argument that requires no response. Intervenors lack knowledge or information sufficient to form a belief as to the truth of the domiciliary allegations in this paragraph and therefore deny. Intervenors admit that the listed individuals are members of the Washington State Building Code

Council, that the Council adopted the Energy Code in the state of Washington, and that Plaintiffs' claims arise out of the Energy Code.

8. As to the assertion of jurisdiction in this paragraph, that allegation is a legal argument that requires no response. Intervenor's lack knowledge or information sufficient to form a belief as to the truth of the domiciliary allegations in this paragraph and therefore deny. Intervenor's admit that the enforcement of the Code occurs in the state of Washington but deny that the Attorney General possesses the duty to enforce the Code.

9. As to the assertion of venue in this paragraph, that allegation is a legal argument that requires no response. As to the factual assertions as to the basis for venue, intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

10. As to the assertion of venue in this paragraph, that allegation is a legal argument that requires no response. As to the factual assertions as to the basis for venue, intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

#### PARTIES

11. Intervenor's lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences of this paragraph and therefore deny. Intervenor's deny as speculative the factual assertions in the final sentence.

12. Intervenor's lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

1           13.     Intervenors admit the first sentence in this paragraph. Intervenors lack knowledge  
2 or information sufficient to form a belief as to the truth of the second sentence and therefore  
3 deny.

4           14.     Intervenors admit the first sentence in this paragraph and deny the second and  
5 final sentences. Intervenors lack knowledge or information sufficient to form a belief as to the  
6 truth of the allegations in the third sentence and therefore deny.

7           15.     Intervenors admit the first sentence in this paragraph and deny the second  
8 sentence.

9           16.     Intervenors admit the allegations in the first two sentences of this paragraph and  
10 deny the last two sentences.

11           17.     Intervenors admit that Arlington 360, LLC is a Washington limited liability  
12 company. Intervenors lack knowledge or information sufficient to form a belief as to the truth of  
13 the remaining allegations in the first two sentences of this paragraph and therefore deny.  
14 Intervenors deny the final sentence.

15           18.     Intervenors admit the allegations in the first sentence of this paragraph and deny  
16 the second sentence.

17           19.     Intervenors lack knowledge or information sufficient to form a belief as to the  
18 truth of the allegations in this paragraph and therefore deny.

19           20.     Intervenors lack knowledge or information sufficient to form a belief as to the  
20 truth of the allegations in this paragraph and therefore deny.

21           21.     Intervenors lack knowledge or information sufficient to form a belief as to the  
22 truth of the allegations in this paragraph and therefore deny.

23           22.     Denied.  
24

1           23.     Intervenors lack knowledge or information sufficient to form a belief as to the  
2 truth of the allegations in the first sentence of this paragraph and therefore deny. Intervenors  
3 deny the allegations in the final sentence.

4           24.     Intervenors lack knowledge or information sufficient to form a belief as to the  
5 truth of the allegations in the first sentence of this paragraph and therefore deny. Intervenors  
6 deny the allegations in the final sentence.

7           25.     Intervenors admit the allegations in the first and second sentences of this  
8 paragraph. Intervenors deny the allegations in the final sentence.

9           26.     Intervenors admit the allegations in the first sentence of this paragraph.  
10 Intervenors lack knowledge or information sufficient to form a belief as to the truth of the  
11 allegations in the second and fourth sentences and therefore deny. Intervenors deny the  
12 remainder.

13           27.     Intervenors admit that the Washington and Northern Idaho District Council of  
14 Laborers is a labor union. Intervenors lack knowledge or information sufficient to form a belief  
15 as to the truth of the remainder of the allegations in the first, second, and third sentences of this  
16 paragraph and therefore deny. Intervenors deny the fourth and fifth sentences.

17           28.     Intervenors admit that Citizen Action Defense Fund is a Washington non-profit  
18 corporation that pursues market-oriented impact litigation.

19           29.     Intervenors admit that National Propane Gas Association is a national trade  
20 organization with members in the propane industry. Intervenors lack knowledge or information  
21 sufficient to form a belief as to the truth of the remaining allegations in the first and second  
22 sentences of this paragraph and therefore deny. Intervenors deny the final sentence.

23           30.     Intervenors admit that Avista is a utility that supplies electricity to customers  
24 across four northwestern states, including Washington. Intervenors lack knowledge or

1 information sufficient to form a belief as to the truth of the remaining allegations in this  
2 paragraph and therefore deny.

3 31. Intervenor's admit that Cascade Natural Gas Corporation is a utility that provides  
4 natural gas to customers in Washington State. Intervenor's lack knowledge or information  
5 sufficient to form a belief as to the truth of the remaining allegations in this paragraph and  
6 therefore deny.

7 32. Intervenor's admit that Northwest Natural Gas Company is a utility that provides  
8 natural gas to customers in Washington State. Intervenor's lack knowledge or information  
9 sufficient to form a belief as to the truth of the remaining allegations in this paragraph and  
10 therefore deny.

11 33. Denied.

12 34. Intervenor's admit that the named individuals are members of the State Building  
13 Code Council, that they adopted the Code, and that the Plaintiffs characterize their claims as  
14 suing the members of the Council in their official capacities.

15 35. Intervenor's admit the identity of the Attorney General and that the Plaintiffs  
16 characterize their claims as suing him in his official capacity. Intervenor's deny that the Attorney  
17 General is responsible for the Code's enforcement.

#### 18 RIPENESS

19 36. The allegations in this paragraph are legal arguments that require no response. To  
20 the extent a response is required, Intervenor's admit that Plaintiffs characterize their claims as a  
21 facial challenge.

22 37. Admitted.

## FACTUAL ALLEGATIONS

38. Denied.

39. Admitted that in 2022 the Council adopted amendments to the Washington State Energy Code. The remainder of the paragraph characterizes the Washington State Energy Code, which is the best evidence of its contents. Intervenor deny any allegations contrary to the Code's plain language, meaning, and context.

40. Admitted that the Council adopted amendments to the Commercial Provisions of the Energy Code on April 22, 2022, with an original effective date of July 1, 2023. The remainder of this paragraph characterizes provisions in the Energy Code, which are the best evidence of their contents. Intervenor deny any allegations contrary to the Code's plain language, meaning, and context.

41. Admitted that the Council adopted amendments to the Residential Provisions of the Energy Code on November 11, 2022, with an original effective date of July 1, 2023. The remainder of this paragraph characterizes provisions in the Energy Code, which are the best evidence of their contents. Intervenor deny any allegations contrary to the Code's plain language, meaning, and context.

42. This paragraph characterizes provisions in the Energy Code, which are the best evidence of their contents. Intervenor deny any allegations contrary to the Code's plain language, meaning, and context.

43. This paragraph characterizes provisions in the Energy Code, which are the best evidence of their contents. Intervenor deny any allegations contrary to the Code's plain language, meaning, and context..

1           44.     This paragraph characterizes provisions in the Energy Code, which are the best  
2 evidence of their contents. Intervenor deny any allegations contrary to the Code's plain  
3 language, meaning, and context.

4           45.     This paragraph characterizes provisions in the Energy Code, which are the best  
5 evidence of their contents. Intervenor deny any allegations contrary to the Code's plain  
6 language, meaning, and context.

7           46.     This paragraph characterizes provisions in the Energy Code, which are the best  
8 evidence of their contents. Intervenor deny any allegations contrary to the Code's plain  
9 language, meaning, and context.

10          47.     Admitted that the effective date of the amendments was July 1, 2023. The  
11 remainder of this paragraph characterizes provisions in the Energy Code, which are the best  
12 evidence of their contents. Intervenor deny any allegations contrary to the Code's plain  
13 language, meaning, and context.

14          48.     Denied.

15          49.     The allegations in this paragraph are legal arguments that require no response. To  
16 the extent a response is required, Intervenor admit that the Ninth Circuit issued its opinion in  
17 *California Restaurant Association v. City of Berkeley*, 56 F.4th 1045 (9th Cir. 2023), on April  
18 17, 2023, and later amended that opinion in *California Restaurant Association v. City of*  
19 *Berkeley*, 89 F.4th 1094 (9th Cir. 2024). The remainder of the paragraph characterizes published  
20 court decisions, which are the best evidence of their contents. Intervenor deny any allegations  
21 contrary to the complaint language, meaning, and context of those published court decisions.

22          50.     Admitted.

23          51.     Admitted.

52. Admitted.

53. This paragraph contains a legal conclusion to which no response is required. To the extent the paragraph contains factual allegations, they are denied.

54. This paragraph contains a legal conclusion to which no response is required. To the extent the paragraph contains factual allegations, they are denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. The allegations in this paragraph are legal arguments that require no response. To the extent the paragraph contains factual allegations characterizing EPCA, that statute is the best evidence of its contents. Intervenor deny any allegations contrary to EPCA's plain language, meaning, and context.

64. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, Intervenor admit that one Senate Report ascribed these purposes to the original EPCA.

65. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, the paragraph characterizes amendments to EPCA, which are

1 the best evidence of their contents. Intervenor deny any allegations contrary to the  
2 amendments' plain language, meaning, and context.

3 66. The allegations in this paragraph are legal arguments that require no response. To  
4 the extent a response is required, the paragraph characterizes provisions of EPCA and legislative  
5 history of the Act, which are the best evidence of their contents. Intervenor deny any  
6 allegations contrary to the language, meaning, and context of the Act.

7 67. The allegations in this paragraph are legal arguments that require no response. To  
8 the extent a response is required, the paragraph characterizes EPCA, which is the best evidence  
9 of its contents. Intervenor deny any allegations contrary to the Act's plain language, meaning,  
10 and context.

11 68. The allegations in this paragraph are legal arguments that require no response. To  
12 the extent a response is required, Intervenor admit that the NEA was passed in 1978. The  
13 remainder of the paragraph characterizes a statute and cites a law review article, which are the  
14 best evidence of their contents. Intervenor deny any allegations contrary to the statute's plain  
15 language, meaning, and context.

16 69. The allegations in this paragraph are legal arguments that require no response. To  
17 the extent a response is required, Intervenor admit that Congress enacted the National Energy  
18 Conservation and Policy Act in 1978. The remainder of the paragraph characterizes the statute,  
19 which is the best evidence of its contents, and Intervenor deny any allegations contrary to its  
20 plain language, meaning, and context.

21 70. The allegations in this paragraph are legal arguments that require no response.  
22 To the extent a response is required, the paragraph cites a Senate Report, which is the best  
23  
24

1 evidence of its contents. Intervenor deny any allegations contrary to NECPA's plain language,  
2 meaning, and context.

3 71. The allegations in this paragraph are legal arguments that require no response. To  
4 the extent a response is required, Intervenor admit that Congress enacted the National Appliance  
5 Energy Conservation Act in 1987. The remainder of the paragraph characterizes a statute and  
6 cites a Senate Report, which are the best evidence of their contents. Intervenor deny any  
7 allegations contrary to the statute's plain language, meaning, and context.

8 72. The allegations in this paragraph are legal arguments that require no response. To  
9 the extent a response is required, the paragraph characterizes a statute and cites a Senate Report,  
10 which are the best evidence of their contents. Intervenor deny any allegations contrary to the  
11 statute's plain language, meaning, and context.

12 73. The allegations in this paragraph are legal arguments that require no response. To  
13 the extent a response is required, the paragraph characterizes a statute and quotes a Senate  
14 Report, which are the best evidence of their contents. Intervenor deny any allegations contrary  
15 to the statute's plain language, meaning, and context.

16 74. The allegations in this paragraph are legal arguments that require no response. To  
17 the extent a response is required, the paragraph characterizes a statute and quotes a Senate  
18 Report, which are the best evidence of their contents. Intervenor deny any allegations contrary  
19 to the statute's plain language, meaning, and context.

20 75. The allegations in this paragraph are legal arguments that require no response. To  
21 the extent a response is required, the paragraph characterizes a statute and cites a House Report,  
22 which are the best evidence of their contents. Intervenor deny any allegations contrary to their  
23 plain language, meaning, and context.

76. Intervenor's admit that the Energy Policy Act of 1992 was enacted in 1992. The remainder of the paragraph characterizes a statute, which is the best evidence of its contents.

Intervenor's deny any allegations contrary to its plain language, meaning, and context.

77. The allegations in this paragraph are legal arguments that require no response.

78. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, the paragraph characterizes a statute, which is the best evidence of its contents. Intervenor's deny any allegations contrary to its plain language, meaning, and context.

79. This paragraph characterizes a statute, which is the best evidence of its contents. Intervenor's deny any allegations contrary to its plain language, meaning, and context.

80. Intervenor's admit that 42 U.S.C. § 6291(1) contains the quoted text. Plaintiffs' characterization of the text is legal argument that requires no response.

81. The allegations in this paragraph are ambiguous. To the extent they are legal arguments, they require no response. To the extent they are intended to be factual allegations, Intervenor's lack knowledge or information sufficient to form a belief as to their truth and so deny.

82. Intervenor's admit that 42 U.S.C. § 6297(c) contains the quoted text.

83. Intervenor's admit that 42 U.S.C. §§ 6291(3) and (4) contain the quoted text.

84. The allegations in this paragraph are legal arguments that require no response. To the extent the paragraph characterizes EPCA, the statute is the best evidence of its contents.

85. The allegations in this paragraph are legal arguments that require no response. To the extent the paragraph characterizes EPCA, the statute is the best evidence of its contents.

1           86.     The allegations in this paragraph are ambiguous. To the extent they are legal  
2 arguments, they require no response. To the extent they are intended to be factual allegations,  
3 Intervenor lack knowledge or information sufficient to form a belief as to their truth and so  
4 deny.

5           87.     Intervenor admit that 42 U.S.C. § 6316(b)(2)(A) contains the quoted text. To the  
6 extent the paragraph characterizes EPCA, the statute is the best evidence of its contents.

7           88.     Intervenor admit that 42 U.S.C. §§ 6311(3), (4), and (7) contain the quoted text.  
8 To the extent this paragraph contains legal argument, no response is required.

9           89.     Intervenor admit that 42 U.S.C. §§ 6311(2)(B) and 6311(2)(A) contain the  
10 quoted text. To the extent the paragraph characterizes EPCA, the statute is the best evidence of  
11 its contents.

12           90.     Denied.

13           91.     Denied.

14           92.     The paragraph characterizes provisions in the Energy Code, which are the best  
15 evidence of their contents. Intervenor deny any allegations contrary to the Code's plain  
16 language, meaning, and context.

17           93.     Intervenor lack knowledge or information sufficient to form a belief as to the  
18 truth of the allegations in the first two sentences of this paragraph and therefore deny.  
19 Intervenor deny the remaining sentence.

20           94.     Intervenor lack knowledge or information sufficient to form a belief as to the  
21 truth of the allegation that Washington has not applied for a waiver from the Secretary of  
22 Energy. Intervenor deny that Washington is ineligible for a waiver. Intervenor admit that 42  
23 U.S.C. § 6297(d)(4) contains the quoted text.

1           95.     This paragraph characterizes EPCA provisions, which are the best evidence of  
2 their contents. Intervenor deny any allegations contrary to the statute's plain language,  
3 meaning, and context.

4           96.     The allegations in this paragraph are legal arguments that require no response. To  
5 the extent one is required, Intervenor deny. The paragraph characterizes EPCA and Energy  
6 Code provisions, which are the best evidence of their contents.

7           97.     The allegations in this paragraph are legal arguments that require no response. To  
8 the extent one is required, Intervenor deny.

9           98.     This paragraph characterizes an EPCA provision, which is the best evidence of its  
10 contents.

11          99.     To the extent the paragraph is a legal argument, no response is required. To the  
12 extent one is required, Intervenor deny. The paragraph characterizes provisions of the Energy  
13 Code, which are the best evidence of their contents. Intervenor deny any allegations contrary to  
14 the Code's plain language, meaning, and context.

15          100.    To the extent the paragraph is a legal argument, no response is required. To the  
16 extent one is required, Intervenor deny. The paragraph characterizes provisions of the Energy  
17 Code, which are the best evidence of their contents. Intervenor deny any allegations contrary to  
18 the Code's plain language, meaning, and context.

19          101.    This paragraph characterizes EPCA provisions, which are the best evidence of  
20 their contents. Intervenor deny any allegations contrary to the statute's plain language,  
21 meaning, and context.

22          102.    To the extent this paragraph is a legal argument, no response is required. To the  
23 extent one is required, Intervenor deny. The paragraph characterizes provisions of the Energy  
24

Code, which are the best evidence of their contents. Intervenor deny any allegations contrary to the Code's plain language, meaning, and context.

103. To the extent this paragraph is a legal argument, no response is required. To the extent one is required, Intervenor deny. The paragraph characterizes provisions of the Energy Code, which are the best evidence of their contents. Intervenor deny any allegations contrary to the Code's plain language, meaning, and context.

104. To the extent this paragraph is a legal argument, no response is required. To the extent one is required, Intervenor deny. The paragraph characterizes provisions of the Energy Code, which are the best evidence of their contents. Intervenor deny any allegations contrary to the Code's plain language, meaning, and context.

105. To the extent this paragraph is a legal argument, no response is required. To the extent one is required, Intervenor deny. The paragraph characterizes provisions of the Energy Code, which are the best evidence of their contents. Intervenor deny any allegations contrary to the Code's plain language, meaning, and context.

106. To the extent this paragraph is a legal argument, no response is required. To the extent one is required, Intervenor deny. The paragraph characterizes provisions of the Energy Code, which are the best evidence of their contents. Intervenor deny any allegations contrary to the Code's plain language, meaning, and context.

107. To the extent this paragraph is a legal argument, no response is required. To the extent one is required, Intervenor deny. The paragraph characterizes provisions of the Energy Code and a court decision, which are the best evidence of their contents. Intervenor deny any allegations contrary to the plain language, meaning, and context of the Code and the court decision.

1           108. This paragraph characterizes provisions of the Energy Code, which are the best  
2 evidence of their contents. Intervenor deny any allegations contrary to the Code's plain  
3 language, meaning, and context.

4           109. To the extent the paragraph is a legal argument, no response is required. To the  
5 extent one is required, Intervenor deny.

6           110. The allegations in this paragraph are legal arguments that require no response. To  
7 the extent one is required, the paragraph characterizes provisions of the Energy Code, which are  
8 the best evidence of their contents. Intervenor deny any allegations contrary to the Code's plain  
9 language, meaning, and context.

10           111. The allegations in this paragraph are legal arguments that require no response. To  
11 the extent one is required, the paragraph characterizes provisions of the Energy Code, which are  
12 the best evidence of their contents. Intervenor deny any allegations contrary to the Code's plain  
13 language, meaning, and context.

14           112. The allegations in this paragraph are legal arguments that require no response. To  
15 the extent one is required, the paragraph characterizes provisions of the Energy Code, which are  
16 the best evidence of their contents. Intervenor deny any allegations contrary to the Code's plain  
17 language, meaning, and context.

18           113. The allegations in this paragraph are legal arguments that require no response. To  
19 the extent one is required, the paragraph quotes a court decision, which is the best evidence of its  
20 contents. Intervenor deny any allegations contrary to the decision's plain language, meaning,  
21 and context.

22           114. The allegations in this paragraph are legal arguments that require no response. To  
23 the extent one is required, Intervenor deny.

CAUSE OF ACTION

COUNT ONE: FEDERAL PREEMPTION BY THE ENERGY POLICY AND  
CONSERVATION ACT

115. Intervenor incorporate by reference their responses to the preceding paragraphs.

116. Denied.

117. Intervenor lack knowledge or information sufficient to form a belief as to the  
truth of the allegations in this paragraph.

118. Denied.

119. Denied.

120. Denied.

121. Denied.

122. Denied.

123. The allegations in this paragraph are legal arguments that require no response.

124. This paragraph characterizes the relief Plaintiffs seek, to which no response is  
required. To the extent a response is required, Intervenor deny that Plaintiffs are entitled to any  
relief at all.

PRAYER FOR RELIEF

Intervenor deny any allegation that is not specifically admitted in this proposed Answer  
and deny that Plaintiffs are entitled to any relief whatsoever, including the relief requested in its  
Amended Complaint.

AFFIRMATIVE DEFENSES

1. This Court lacks jurisdiction to hear some or all of plaintiffs' claims.

2. Some or all of plaintiffs' claims fail to state a claim for which relief can be  
granted.

1 WHEREFORE, Intervenor respectfully request that the Court dismiss the Amended  
2 Complaint with prejudice, enter judgment in favor of Intervenor, and grant such relief as the  
3 Court deems just and proper.

4 DATED this 27th day of June, 2024.

5 /s/ Jan E. Hasselman

6 JAN E. HASSELMAN, WSBA No. 29107

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